

United States District Court**FILED**

06 APR 19 PM 4:22

OHIO

SHARON L. OVINGTON
UNITED STATES
MAGISTRATE JUDGE

SOUTHERN

DISTRICT OF

UNITED STATES OF AMERICA

V.

CRIMINAL COMPLAINTTHOMAS FOTI
(Name and Address of Defendant)CASE NUMBER: **3 : 06 mi - 091**
SHARON L. OVINGTON

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about April 19, 2006 and April 20, 2006, in Montgomery county, in the Southern District of Ohio, and elsewhere defendants did, (Track Statutory Language of Offense)

travel in interstate commerce for the purpose of engaging in illicit sexual conduct with another person, to wit: an individual who has not attained the age of eighteen (18) years, in violation of Title 18, United States Code, Section 2423(b).

Count 2 - Beginning on or about April 6, 2006, and continuing up to and including April 20, 2006, in Montgomery County, in the Southern District of Ohio and elsewhere, the defendant used a facility or means of interstate commerce, to wit: "Yahoo! chat", and knowingly attempted to persuade, induce, entice, and coerce an individual who has not attained the age of eighteen (18) years, to engage in sexual activity, in violation of Title 18, United States Code, Section 2422(b).

in violation of Title _____ United States Code, Section(s) _____

I further state that I am a(n) Special Agent with the FBI and that this complaint is based on the following facts:

SEE ATTACHED AFFIDAVIT.

Continued on the attached sheet and made a part hereof:

☒ Yes ☐ No

Sworn to before me and subscribed in my presence,

April 19, 2006

Date

at Dayton, Ohio

City and State

U.S. Magistrate Judge Sharon L. Ovington

Name & Title of Judicial Officer

Signature of Judicial Officer

Jeffrey L. Colman
Signature of Complainant

Sharon L. Ovington
Signature of Judicial Officer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

MMQ
4-19-06

AFFIDAVIT

I, Jeffrey L. Coburn, have been employed as a Special Agent of the FBI since January 2003. I am currently assigned to the Dayton, Ohio Resident Agency. Since joining the FBI, I have investigated violations of federal law to include international terrorism, domestic terrorism, child exploitation, child pornography, computer intrusion, extortion, and bank robberies. While employed as a Special Agent of the FBI, I have received various training to include the following: Crimes Against Children, Investigating Child Sexual Abuse, and Online Child Pornography/Child Sexual Exploitation. Prior to joining the FBI, your Affiant was employed as a Software Engineer, and performed a wide variety of computer-related duties for approximately ten years. Your Affiant holds a bachelors degree in Business, Information Systems from the University of Phoenix. As a FBI agent, your Affiant is authorized to investigate violations of federal law, and execute warrants issued under the authority of the United States.

BACKGROUND

1. The statements in this affidavit are based in part on information provided by Special Agents of the FBI, law enforcement officers, and on my personal experience and background as a Special Agent of the FBI. Since this affidavit is being submitted for the limited purpose of securing an arrest warrant, I have intentionally not included each and every fact known to me concerning this investigation. I have set forth only

1 the facts that I believe are necessary to establish probable
2 cause to believe that THOMAS FOTI, date of birth November 23,
3 1970, violated Title 18, United States Code, Section 2423(b)
4 (Travel with intent to engage in illicit sexual conduct) and
5 Title 18, United States Code, Section 2422(b) (Coercion and
6 enticement) .

7 **STATUTORY AUTHORITY**

8 2. This investigation concerns alleged violations of
9 Title 18, United States Code, Section 2423(b).

10
11 3. Title 18, United States Code, Section 2423(b) states:

12 A person who travels in interstate commerce or travels
13 into the United States, or a United States citizen or an alien
14 admitted for permanent residence in the United States who travels
15 in foreign commerce, for the purpose of engaging in any illicit
16 sexual conduct with another person shall be fined under this
17 title or imprisoned not more than 30 years or both.

18
19 4. Title 18, United States Code, Section 2422 (b) states:

20 Whoever using the mail or any facility or means of
21 interstate or foreign commerce, or within the special maritime
22 and territorial jurisdiction of the United States knowingly
23 persuades, induces, entices, or coerces any individual who has
24 not attained the age of 18 years, to engage in prostitution or
25 any sexual activity for which any person can be charged with a
26 criminal offense, or attempts to do so, shall be fined under this
27 title and imprisoned not less than 5 years and not more than 30
28 years.

FACTS AND CIRCUMSTANCES

22 5. On April 3, 2006, your Affiant interviewed a sixteen
23 year old female (FEMALE1) in the Southern District of Ohio.
24 FEMALE1 stated that she had been communicating on the Internet
25 using Yahoo! with THOMAS FOTI. FOTI used the screen names
26 "thomas_f71@yahoo.com" and "thomas_f@hotmail.com." FOTI and
27 FEMALE1 have been communicating by telephone and the internet
28

1 since FEMALE1 was twelve years old. FOTI told FEMALE1 that he
2 was at work while they chatted, and sometimes he was at home.
3 FOTI told FEMALE1 that he lives in California which is a three
4 hour time difference from Ohio.

5
6 6. During their conversations, FOTI graphically
7 described sexual things that he wanted to do to FEMALE1. FEMALE1
8 described FOTI as being very domineering and into
9 sadomasochism. FEMALE1 was told by FOTI that he was 38 years
10 old. FOTI gave his telephone number to FEMALE1 one, (415) 893-
11 9094 and address 101 Casper, Novato, California. FOTI never told
12 FEMALE1 where he worked.

13
14 7. FEMALE1 and FOTI stopped communicating via computer
15 approximately 18 months ago. They continued to talk weekly on
16 the telephone until FOTI became angry that FEMALE1 had a
17 boyfriend. FEMALE1 stopped talking to FOTI altogether
18 approximately two months ago.

19
20 8. Your Affiant has learned that telephone number (415)
21 893-9094 is subscribed by THOMAS FOTI, 101 Casper Place, Novato,
22 California 94947. FOTI has had this telephone number since at
23 least December 10, 2002.

24
25 9. Public records revealed that 101 Casper Place, Novato
26 California 94947 is registered to Thomas FOTI, born November 23,
27 1970.

1 10. During FOTI and FEMALE1's online conversation, FOTI
2 often talked sexual to her making statements such as, "I'm hard"
3 while he masturbated as they talked on the telephone. FOTI made
4 FEMALE1 tell him, "I'm a whore!" FOTI made FEMALE1 make her call
5 him "Daddy."

6
7 11. FOTI sent FEMALE1 an e-mail that contained a JPEG
8 image. The photo was of a prepubescent female, that FEMALE1
9 described as a "little girl." The prepubescent female was nude
10 and bound with her legs spread wide. He genitals were exposed.
11 FOTI told FEMALE1 that he took the photo several years ago.
12 FEMALE1 has since deleted the image from her computer.

13
14 12. FOTI told FEMALE1 that he was going to come see her.
15 Approximately 18 months ago, FOTI traveled to the Southern
16 District of Ohio to meet with FEMALE1. He traveled in a rented
17 vehicle and parked in a rural driveway that was adjacent to the
18 location of where FEMALE1 was staying. FOTI contacted FEMALE1 and
19 requested that she meet him. FEMALE1 met FOTI at his vehicle.
20 FOTI hugged and kissed FEMALE1 on the mouth, and rubbed her upper
21 thigh. FEMALE1 decided that she did not want to be with FOTI and
22 made up an excuse to leave the vehicle. FOTI stayed in Ohio for
23 three days and called FEMALE1 from his hotel, and a Pizzeria near
24 FEMALE1's location in order to engage her in sexual relations.
25 FOTI continued to call FEMALE one and told her he flew to Ohio to
26 be with her. FOTI continued to call and tell FEMALE1 that he
27 wanted to have sex with her. He described what he wanted to do
28 to her, and what FOTI wanted FEMALE1 to do to him. FEMALE1

1 continued to make excuses not to join up with FOTI again. FOTI
2 called FEMALE1 and told her that he had put the back seats down
3 in his vehicle. He said they could have sex in the back of the
4 vehicle. FEMALE1 refused. FOTI asked FEMALE1 to sneak out of
5 her house late at night, and her parents would never even know.
6 FEMALE1 refused. FOTI expressed that he wanted to have sex with
7 her to have children with her.

8
9 13. FEMALE1 described FOTI as being approximately 38 years
10 old, 6' 2" and 180 pounds. FEMALE1 stated that FOTI had a
11 likeness to a famous Hollywood actor, Kiono Reeves. An NCIC
12 record check revealed that FOTI is 6' 02", weighs 175 pounds.

13
14 14. On April 4, 2006, FEMALE1 and her guardian gave
15 written permission for your Affiant to assume her online identity
16 from which she was communicating with FOTI,
17 gothic666cadi@yahoo.com. On April 6, 2006, your Affiant began
18 engaging in online conversations with FOTI through his Yahoo!
19 Messenger ID "Thomas Foti." The Profile of "Thomas Foti"
20 revealed the Yahoo! screen name "thomas_f71." These
21 conversations occurred for several hours and happened over
22 multiple days.

23
24 15. During one of the online conversation, FOTI
25 acknowledged that they had not talked online for approximately
26 six months. FOTI stated that prior to them meeting in Ohio, they
27 had been communicating for years. FOTI talked about his travel
28 to Ohio. He said, "...I sat in My car for HOURS fucking waiting

1 for you for three days." Several places throughout the online
2 conversation, it is made clear that FEMALE1 is 16 years old.

3
4 16. While communicating with FOTI undercover, your Affiant
5 told a fictitious story that FEMALE1 had sex with another older
6 man. FOTI was very concerned that FEMALE1 may have AIDS. He
7 instructed FEMALE1 to be tested for AIDS. FOTI articulated that
8 he would "beat her black and blue" and whip her so hard that she
9 bled, and she would have deserved every lash, and fist hitting
10 because of what she had done with another older man.

11
12 17. Below are some quotes from the undercover online
13 conversation. The comments below are made by FOTI: "If I don't
14 [sic] book My tickets NOW then I wont get out there at all." "I
15 was looking forward to being the oldest guy that had you. LOL
16 (laughing out loud) lame huh?" "I like things rough" and "you
17 know I would never kill you. but you would get bruises I like to
18 slap and pull hair and that is just how I am." "If you truely
19 [sic] love ME then you will give your body and soul, shit
20 everything to Me as it should be." "Its crazy there is really
21 only one sure way to letting Me know immediately if you were
22 honestly truthfull [sic] about all of this and you werent [sic]
23 going to turn back around in a year. LOL but it wont happen cuz
24 [sic] that would be for you to be here." "you understand why I
25 say coming here would show Me? yes? it would show Me you have NO
26 reservations that you would be willing to do that and show Me you
27 love Me. that you would be willing to make the commitment to be
28 with Me."

1
2 18. FOTI continued to express his desire to take FEMALE1
3 home with him back to California. FOTI inquired if FEMALE1 had
4 ever purchased fake IDs. Your Affiant believes that they may
5 have talked about this with some detail when FEMALE1 was
6 communicating regularly with FOTI. FOTI stated that the only
7 safe way for FEMALE1 to live with him is to take a Greyhound bus
8 and to change buses a few times along the way. FOTI stated that
9 if he took her back with him when he came out then he would go to
10 jail. FOTI stated, "I want to be able to take you when I want
11 and make love to you or fuck you when and how I decide. I want
12 to get you pregnant lol (laughing out loud) though I know that
13 scares you but its just another way to show you I love you. The
14 process of getting them will be fun, don't [sic] you think?" "I
15 want you to give me daughters." FOTI further stated, "I have
16 wanted you to be living with Me since you were 13", "can you
17 imagine how much shit I would have saved you from if you had just
18 come to Me right away?", "you would have been with Me since you
19 were 13 being with Me living at my house.", "Doing as I said like
20 you should have been from day one hoestly [sic] you would have
21 had a baby by now I probably would have gotten you pregnant at 14
22 or 15 would that have bothered you? a cute little daughter for
23 Me." FOTI asked FEMALE1 if she was on birth control. He
24 instructed her to get off of birth control. He wanted to know
25 when FEMALE1's period was. He stated that he only wanted
26 daughters, and that if she was pregnant with a son, she would
27 have to abort it, or give it up for adoption. FOTI said, "and
28 btw (by the way), you better get used to Me fucking your mouth a

1 lot [sic] girl." FOTI later stated, "but I can tell you now that
2 I wont wear a condom and I WILL be fucking you that a problem
3 cunt?"

4
5 19. FOTI stated that he would assert his control over
6 FEMALE1 in public. He also stated that he may instruct her to
7 have a "threesome," or "make out" with another female. He
8 further said, "and if your [sic] a bitch to Me when your around
9 Me I will slap or hit you, you know that, yes?"

10
11 20. FOTI inquired as to what airport to fly into when he
12 came to be with her. FOTI inquired as to what Hotel to stay at.
13 He wanted one that had a good side entrance that he could bring
14 FEMALE1 in so no one would see them. He told her to not get a
15 hotel that was in her same city because he did not want people to
16 recognize her. He further changed his mind, and stated he wanted
17 a hotel that had entrances to the rooms from the parking lot. He
18 did not want a central lobby because he was concerned about being
19 video taped with surveillance cameras.

20
21 21. FOTI stated that he would attempt to obtain airline
22 tickets for April 20, 2006 departing Dayton Ohio on April 23,
23 2006. He would take the "red-eye" on Wednesday April 19, 2006.

24
25 22. When asked about how they should communicate on the
26 telephone, FOTI asked FEMALE1 if she still had his telephone
27 number. He stated that she better not keep his telephone number
28 written down. FOTI said, "if you do ever come here they will

1 fucking go all over your room think about these things (FEMALE1)
2 and if you come out your computer HD goes with you."

3
4 23. FOTI stated that he wanted to go to a rave when he was
5 with FEMALE1 in Ohio. He told her that he wanted her to wear a
6 short skirt and that he may ask her to do "acid."

7
8 24. FOTI reinforced that he wanted FEMALE1 to go over her
9 bedroom and make sure she did not have anything written down
10 about him. He also told her not to make any telephone calls to
11 him because he did not want there to be a record of them
12 communicating.

13
14 25. FOTI asked FEMALE1 again if she wants to live with
15 him. He said that because she was only 16 years old, she would
16 not be able to talk to her friends, or use any of her online IDs
17 again.

18
19 26. FOTI stated that before he comes out to be with
20 FEMALE1 he needs to know that she is willing to do everything he
21 says and wants and that she would be his girl for life "this
22 time." FOTI requested the password to FEMALE1's Microsoft
23 Hotmail account, and Yahoo! Messenger account. He stated that if
24 she gave these passwords to him, he would "book a ticket today to
25 be with her. He later stated, "once your with Me things will
26 become VERY simple for you."

27
28 27. FOTI asked FEMALE1, "How will you show Me that you

1 love Me when I'm there?" FOTI further stated, "Sex is a good
2 start." FOTI went on to talk about oral sex. He stated,
3 "besides, I think its hella [sic] hot for a girl to get fucked
4 by a cock tha [sic] is as long as she is old! lol (laughing out
5 loud) ofcourse [sic] if I were to do that she would be 8! LOL
6 (laughing out loud)." "so you will be able to EASILY take all of
7 My cock down your throat, huh?"

8
9 28. FOTI asked FEMALE1 if her parents were wealthy. He
10 further stated, "What is funy [sic] is that its [sic] WAY better
11 that your parents are NOT rich. WAYY [sic] WAAY [sic] WAYY
12 [sic] because then they don't [sic] have the clout or the cash to
13 get the cops and hire other people and shit like that!" FOTI
14 further states, "I will help you with the buss tickets to come to
15 Me that a problem slut?" He further instructed FEMALE1 to get a
16 second fake ID. He gave further instructions that she would take
17 a bus north using one fake ID and then switch fake IDs and take
18 another bus out to FOTI.

19
20 29. FOTI stated that he booked a hotel room at 8101
21 Springboro Pike, Miamisburg, Ohio. Your Affiant has learned that
22 this address is a Studio 6 motel. In a conversation on April 17,
23 2006, FOTI expressed that he booked his flight into James Cox
24 International Airport, Dayton, Ohio. FOTI stated that he arrives
25 into Dayton, Ohio at 10:30 am. He would then need to get his
26 luggage and his rental car. He would then go to the hotel. FOTI
27 further stated, "you want Me to fuck your mouth and cum down your
28 throat? you going to swallow it like a stupid cunt should?" "and

1 if I choke you while I force My cock in your ass? kewl as in
2 you're a little fucking cunt for My cock and youll [sic] take it
3 like the stupid whore you are?" "how does it make you feel I'm
4 going to come and use you hard, then in a few months I'm going to
5 have you come live with Me as My good little submissive slut and
6 make you take My cock every day whenever I feel like it and
7 however I feel like it???" FOTI told FEMALE1 that she could not
8 come out to be with him sooner because there would be a paper
9 trail that would be to close to his travel to Ohio. He wanted
10 there to be time between when he came to Ohio and when FEMALE1
11 disappeared. FOTI stated, "I don't want you to be with Me
12 pregnant and then have you taken away from Me and Me go away
13 aswell! I would rather have you pregnant knowing how much I love
14 you for a couple months or so then you leave to come be with me.
15 you hopefully will have My baby growing inside you on your way
16 here." FOTI then implied that he would give his female children
17 training just like FEMALE1.

18
19 30. FOTI instructed FEMALE1 of how they should meet at the
20 hotel. He instructed her what to tell her friend who was
21 dropping her off at the local Mall which is in walking distance
22 of Studio 6 motel. He instructed FEMALE1 to tell her friend to
23 goto her boyfriends house and stay there until FEMALE1 called her
24 to pick her up. FOTI told her that he did not want the cops to
25 get involved because she was missing.

26
27 31. FOTI expressed that FEMALE1 should have been with him
28 since she was eight years old. "you probably would have just had

1 to have shut your mouth and taken it when I wanted to give you
2 one, huh?"

3
4 32. Your Affiant has learned that FOTI has purchased a
5 round trip ticket through American Airlines leaving San Francisco
6 on April 19, 2006 at 11:37 pm, after a connection to Chicago
7 OHare, FOTI will arrive into Dayton, Ohio on April 20, 2006 at
8 10:30 am.

9
10 33. Your Affiant has learned that FOTI reserved a rental
11 vehicle from Budget Rental Car, located in the Dayton,
12 International Airport. FOTI is scheduled to pick up his vehicle
13 on April 20, 2006 at 10:30 am.

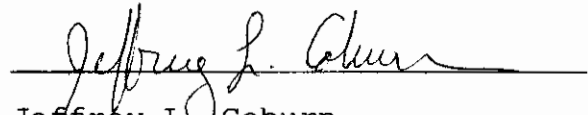
14
15 34. Your Affiant has learned that FOTI has reserved a
16 motel room at Studio 6, 8101 Springboro Pike, Miamisburg, Ohio.
17 He is scheduled to arrive on April 20, 2006 and depart on April
18 23, 2006. FOTI will be staying in room number 142.

19
20 35. During a consensually recorded telephone conversation
21 between FEMALE1 and FOTI on April 18, 2006, FOTI communicated to
22 FEMALE1 in very sparse sentences. It sounded like there may have
23 been other people in his office. He stated "You looking
24 forward?", "How we gonna work this? How are you going to meet
25 me?" "Why don't you give me a spot now in case my phone doesn't
26 work for some reason." They agreed on Ruby Tuesdays located
27 across the street at the Dayton, Ohio Mall. FOTI stated, "Are
28 you looking forward to seeing me?" "Are you nervous?" "You bitch

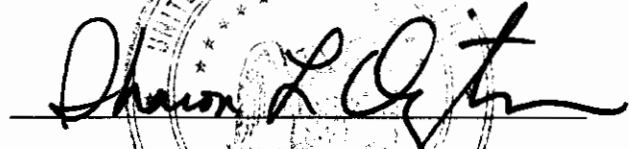
1 you better be nervous (Laughing)." They both agreed to meet at
2 approximately 12:30 pm on Thursday April 20, 2006.

3
4 **CONCLUSION**

5 36. Based on the aforementioned factual information, your
6 Affiant respectfully submits that there is probable cause to
7 believe that THOMAS FOTI has violated Title 18 United States Code
8 Section 2423(b) (Travel with intent to engage in illicit sexual
9 conduct) and and Title 18, United States Code, Section 2422(b)
10 (Coercion and enticement), and requests that the attached warrant
11 be issued authorizing the arrest of THOMAS FOTI.

12
13
14 
15 Jeffrey L. Coburn
16 Special Agent
17 Federal Bureau of Investigation
Dayton, Ohio

18 Subscribed and sworn to before me this 19th day of April, 2006.

19
20
21 
22 Sharon L. Orlington
23 U.S. Magistrate Judge
24
25
26
27
28